

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ROBERT KAPLAN
ELEANOR L. KAPLAN

Claim No. CU-1909

Decision No. CU-1640

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered April 10, 1968. Oral hearing requested. Cancelled.

Hearing on the record October 14, 1971.

FINAL DECISION

On April 10, 1968 the Commission issued a Proposed Decision denying this claim for failure of proof. The claim was based on the loss of stock interests in five Cuban corporations and other personalty including household furnishings.

Claimant, ROBERT KAPLAN, objected to the Proposed Decision and thereafter submitted certain evidence in support. The record now discloses that ELEANOR L. KAPLAN, the wife of ROBERT KAPLAN, has been a United States national since birth. Pursuant to the Community Property Law of Cuba, she had a one-half interest in property acquired by her husband in Cuba subsequent to this marriage. Accordingly, ELEANOR L. KAPLAN is joined as claimant in this matter.

The losses are described as follows:

1. Stock interest in Cuban Independent Trading Corporation (Cuban)	\$ 95,000.00
2. Stock interest in Colon Independent Trading Corporation (Colon)	25,875.00
3. Stock interest in Distribuidora de Fibra de Vidrio (Fibra)	13,050.00
4. Stock interest in Minimax Super-Mercados, S.A. (Minimax)	75,000.00
5. Stock interest in Cia. Commercial Guarina, S.A. (Guarina)	10,000.00
6. Personal and household effects	<u>20,750.00</u>
	\$239,675.00

Stock Interests in Cuban Corporations

Based on the entire record including information available to the Commission, the Commission now finds that, pursuant to the Community Property Law of Cuba, claimants each owned a one-half interest in 1,372 shares of Minimax; 169 shares of common and 4,340 shares of preferred stock of Fibra; 5,040 shares of common and 85 shares of preferred stock of Cuban; and 162 shares of common stock of Colon.

In our decisions entitled Claim of Libby Holman Reynolds (Claim No. CU-1384); Claim of Helen Brandon and Claudia Muriel Deske (Claim No. CU-2175); Claim of Benjamin Kovner (Claim No. CU-1015); and Claim of Jack Clareman and Benet Polikoff, Executors of the Estate of Montgomery Clift, Deceased (Claim No. CU-1385), which we incorporate herein by reference, we held that these companies were intervened or otherwise taken by the Government of Cuba on September 1, 1960; and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the methods used in determining the value of Minimax stock as \$1.0023 per share; the value of Fibra common stock as \$5.4913 per share and preferred as \$1.00 per share; the value of Cuban common as \$.600476 per share and Cuban preferred as \$100.00 per share; and the value of Colon common as \$4.0418 per share.

On the basis of evidence of record in the instant case, it is found that claimants came within the terms of the Reynolds, Brandon, Kovner, and Clift decisions, and that claimants suffered a loss in the aggregate amount of \$18,824.36 for the above-described stock interests within the meaning of Title V of the Act.

With regard to the portion of this claim based on the ownership of a stock interest in Guarina, the record contains no evidence of ownership or evidence regarding its nationalization or other taking and no balance sheet or other financial statements from which the value of Guarina can be ascertained. Accordingly, the Commission affirms the denial of this portion of the claim.

Household Furnishings and Other Personalty

The record includes a detailed list of the furniture, furnishings, and other personalty including a 1957 Ford Fairlane with estimated value. Based on all the evidence of record the Commission finds that claimants owned this personalty, that it was taken by the Government of Cuba on October 14, 1960, that the aggregate evaluation of \$21,866.00 is fair and reasonable, and that claimants suffered a loss in this amount within the meaning of the Act.

Recapitulation

The losses in this claim are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>ROBERT KAPLAN</u>	<u>ELEANOR L. KAPLAN</u>
Colon, Cuban, Minimax, Fibra	September 1, 1960	\$ 9,412.18	\$ 9,412.18
Household Furnishings	October 14, 1960	10,933.00	10,933.00
		\$20,345.18	\$20,345.18

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant claim it is so ordered as follows:

	<u>FROM</u>	<u>ON</u>
ROBERT KAPLAN	September 1, 1960	\$ 9,412.18
	October 14, 1960	10,933.00
ELEANOR L. KAPLAN	September 1, 1960	9,412.18
	October 14, 1960	10,933.00

Accordingly, the following Certifications of Loss will be entered and in all other respects the Proposed Decision as amended herein is affirmed.


CERTIFICATIONS OF LOSS

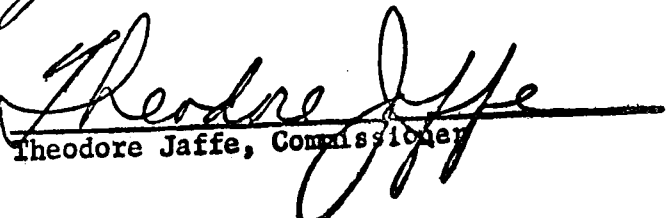
The Commission certifies that ROBERT KAPLAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty Thousand Three Hundred Forty-five Dollars and Eighteen Cents (\$20,345.18) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that ELEANOR L. KAPLAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty Thousand Three Hundred Forty-five Dollars and Eighteen Cents (\$20,345.18) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

OCT / 4 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ROBERT KAPLAN

Claim No. CU - 1909

Decision No. CU - 1640

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$239,675.00, was presented by ROBERT KAPLAN, and is based upon the asserted loss of clothing, household furnishings, and stock interests in five Cuban corporations.

Under Title V of the International Claims Settlement Act of 1948 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Other than his own statements as set forth in the claim filed on April 24, 1967, and an inventory of personal property submitted to the United States Embassy in Havana, Cuba, in 1960, sufficient evidence was not submitted to justify a favorable determination by the Commission in this claim. Accordingly, suggestions were made thereafter to claimant as to the type of evidence proper for submission to establish this claim under the Act. However, no additional evidence or information was submitted.

On November 7, 1967, claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted; neither has claimant corresponded with the Commission.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-1909